

REMARKS

Claims 18-20, 23-24, and 26-37 are pending in the application.

Declaration Under Rule 132

Attached is a signed Rule 132 Declaration by inventor Yixing Lin. However, we have not been able to obtain signatures from either of inventors Clifford Stow or Dajiang Xu.

Clifford Stow is currently a manager at Applied Materials, and we have tried to contact him via telephone and email on April 29, June 30, October 4 and November 4. We will continue to attempt to obtain his signature.

Dajiang Xu is no longer with Applied Materials, and attempts have been made to reach him via US Mail. Specifically, copies of the Declaration and signature request letter were sent to the last known address of inventor Dajiang Xu via Express Mail on June 30, 2010 with Express Mail Label No.: EO 978305061 US, and again on October 4, 2010 with Express Mail Label No.: EM 292043447 US. Copies of the USPTO delivery confirmation of each of these envelopes are attached. However, we have not received a signed Declaration from Dajiang Xu. Thus, we believe that nonsigning inventor Dajiang Xu refuses to execute the Declaration. The last known address of Dajiang Xu is: 1031 Sandalwood Lane, Milpitas, CA 95035.

Statement of Attorney of Record

As the 132 Declaration cannot be signed by all inventors we are also providing a Statement of the undersigned patent attorney of record stating that the Invention Alert excerpt was received by our firm prior to October 2, 2003. The undersigned patent attorney has first hand knowledge that the invention was conceived, as evidenced by the Invention Alert, prior to October 2, 2003, which is the publication date of Lin et al. '965. Further, the undersigned patent attorney has first hand knowledge that the patent application was diligently written and reviewed from the date of receipt of the Invention Alert by our firm and up until the filing date of the present application on October 22, 2003.

Accordingly, the Examiner is requested to consider the Declaration and Statement of Attorney of Record, each of which present the excerpt of the Invention Alert, in spite of the missing inventor signatures.

Lin et al. '916 - Prior Art Only Under 102(e)

Evidence sufficient to show conception followed by effective reduction to practice is being provided to demonstrate that Lin et al. '965 does not qualify as prior art under 102(a), but only under 102(e).

Further, as the invention of Lin et al. '965 and the present application were both commonly owned or subject to assignment to Applied Materials, Lin et al. '965 therefore would not qualify as a 103 reference according to 103(c), which states:

Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102, shall not preclude patentability under section 103 where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Lin et al. '965, and the subject matter and claimed invention of the present application were, at the time the claimed invention was made, both commonly owned by or subject to an obligation of assignment to Applied Materials, Inc.

Accordingly, Lin et al. '965 does not qualify as prior art under section 103.

Rejections under 37 CFR 103(a)

I. Claims 18-20, 23-24, and 26-37 were rejected under 35 U.S.C. 103(a) as being unpatentable over Lin, et al. (US 2003/0185965) in view of Lin (US 2003/0026917), further in view of Garg (US 5,009,966).

The rejection of claims 18-20, 23-24 and 26-37 under 35 USC 103(a) is improper because Lin et al. '965 does not qualify as a 103 reference according to 103(c), as outlined above.

Accordingly, the 103(a) rejection based on Lin et al. '965 should be withdrawn.

CONCLUSION

The above remarks and attached declaration and statement of council are believed to place the application in condition for allowance. Should the Examiner have any questions regarding the present submission the Examiner is requested to call the undersigned representative at: (415) 538-1555.

Respectfully submitted,

JANAH & ASSOCIATES, P.C.

Date: November 4, 2010

By: 

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Please direct all telephone calls to Ashok K. Janah at (415) 538-1555.

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